

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

ALUM-A-POLE CORPORATION,

Plaintiff,

v.

BADGER LADDER, INC.,

Defendant.

Civil Action No.

COMPLAINT

Document Electronically Filed

Plaintiff Alum-A-Pole Corporation ("Alum-A-Pole"), by its undersigned attorneys, as and for its complaint against defendant Badger Ladder, Inc. ("Badger"), says:

PARTIES

1. Plaintiff Alum-A-Pole is a corporation, organized under the laws of the State of New York, that maintains its principal place of business at 1011 Capouse Avenue, Scranton, Pennsylvania 18509.

2. Defendant Badger is a Wisconsin corporation that maintains its principal place of business at 2040 S. Ashland Avenue, Green Bay, Wisconsin 54304.

JURISDICTION

3. This is an action for infringement of a federally registered trademark under section 32 of the Lanham Act, 15 U.S.C. §1114, and unfair competition under section 43(a) of the Lanham Act, 15 U.S.C. §1125.

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a) and (b), as well as 28 U.S.C. § 1332 as there is complete diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

BACKGROUND

5. Plaintiff Alum-A-Pole is engaged in the business of, *inter alia*, the design, manufacture, and sale of scaffolding and scaffolding jacks.

6. Of relevance here, Alum-A-Pole has made, sold, and promoted a line of scaffolding jacks under the trademark PRO-JACK for more than 25 years. Alum-A-Pole's PRO-JACK trademark is also the subject of United States Trademark Registration No. 3,893,334. A true copy of this Registration is attached as Exhibit A.

7. Since introducing PRO-JACK to the marketplace, Alum-A-Pole has expended substantial sums to advertise and promote its trademarked PRO-JACK products nationally and regionally through trade publications, newspapers, trade show appearances, direct mail, the Internet, and special promotions.

8. As a result of the extensive advertising and promotion of Alum-A-Pole's PRO-JACK products over many years, Alum-A-Pole's PRO-JACK trademark has become well known in the trade as an indicator of high quality scaffolding jacks that originate with Alum-A-Pole. This mark also distinguishes Alum-A-Pole's scaffolding jacks from those of others, and is a valuable asset of Alum-A-Pole.

**DEFENDANT'S TRADEMARK
INFRINGEMENT AND UNFAIR COMPETITION**

9. Defendant Badger is a former customer of Alum-A-Pole. As such, defendant Badger is fully aware of Alum-A-Pole's products and trademarks, including the PRO-JACK mark.

10. To Alum-A-Pole's knowledge, defendant Badger first misappropriated and wrongfully traded on Alum-A-Pole's PRO-JACK mark in early 2010 in connection with a "bait and switch" scheme whereby Badger advertised the sale of PRO-JACK products on its website but delivered pump jacks manufactured by others.

11. Alum-A-Pole promptly protested defendant Badger's acts of trademark infringement and unfair competition in April 2010. Defendant Badger, in turn, immediately deleted all references to PRO-JACK from its website and promised to cease its infringement.

12. That promise proved to be fleeting at best. In or about January 2011, defendant Badger published a sales brochure or flyer that is replete with references to PRO-JACK pump jacks, braces, and benches, as evidenced by the cover page of this flyer, a copy of which is attached as Exhibit B.

13. Defendant Badger's use of PRO-JACK is wholly without the consent of Alum-A-Pole, and is part of a deliberate course of action to trade on Alum-A-Pole's mark and good will that has caused Alum-A-Pole to sustain irreparable harm and damages.

14. Defendant's unauthorized use of PRO-JACK for the same and related and products associated with the trademark of Alum-A-Pole has caused, is causing, will continue to cause, and is likely to cause confusion, mistake, and/or deception of customers and potential customers of the parties that some affiliation, connection, or association exists between defendant's products and those of Alum-A-Pole, or that defendant's products originate or are sponsored, endorsed, or approved by Alum-A-Pole, or are in some manner related to Alum-A-Pole.

15. Defendant's unauthorized use of a confusingly similar trademark falsely designates the origin of defendant's products, and falsely and misleadingly describes and represents facts with respect to defendant and its products, and enables it to palm off its products on an unsuspecting public as those

of Alum-A-Pole and to trade on and receive the benefit and good will of the trademark of Alum-A-Pole.

16. Defendant's unauthorized use of a confusingly similar mark interferes with Alum-A-Pole's ability to control the nature and quality of goods provided under its trademark, thus placing the valuable reputation and good will of Alum-A-Pole in the hands of defendant over which Alum-A-Pole has no control.

17. Unless defendant's unauthorized use of a confusingly similar trademark is restrained by this Court, defendant will continue to cause irreparable injury to Alum-A-Pole and to the public for which there is no adequate remedy at law.

18. Defendant's acts of infringement and unfair competition have been made with full knowledge and conscious disregard of the rights of Alum-A-Pole, and are willful, intentional, and deliberate acts, in bad faith, with the intent to trade on the goodwill of the trademark of Alum-A-Pole.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT

19. Alum-A-Pole repeats the allegations of paragraphs 1-18 as if fully set forth here.

20. The acts of defendant as aforesaid constitute infringement of Alum-A-Pole's registered trademark in violation of § 32 of the Lanham Act, 15 U.S.C. § 1114.

COUNT II
FEDERAL UNFAIR COMPETITION

21. Alum-A-Pole repeats the allegations of paragraphs 1-20 as if fully set forth here.

22. The acts of defendant as aforesaid constitute unfair competition in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125.

WHEREFORE, plaintiff Alum-A-Pole prays for judgment in its favor and against defendants, as follows:

a. That defendant, including, as appropriate, its officers, agents, employees, and all acting in concert, participation, or combination with defendant, be temporarily restrained and preliminarily and permanently enjoined from infringing Alum-A-Pole's federally registered and common law trademark, and from directly or indirectly using the mark PRO-JACK, or any other mark, word, or name similar to PRO-JACK that is likely to cause confusion or mistake, or to deceive the public as to the origin or sponsorship of products of Alum-A-Pole.

b. That defendant be ordered to deliver to Alum-A-Pole or to impound during the pendency of this action, any labels, signs, prints, packages, and advertisements bearing the name PRO-JACK, or any variation thereof, in the possession or control of defendant, and to deliver up for destruction all infringing copies, and all plates, molds and other matter for making such infringing copies in accordance with 15 U.S.C. § 1118;

c. That defendant be ordered to account to Alum-A-Pole for any and all profits derived from the sale of any products or services under the mark PRO-JACK, and variations thereof, and that an award of profits be increased as the Court finds to be just under the circumstances;

d. That defendant be ordered to pay over to Alum-A-Pole all damages sustained by Alum-A-Pole by reason of its infringement and unfair competition, and that said damages be trebled;

e. For an award of prejudgment and post-judgment interest;

f. For an award of reasonable attorneys' fees and other expenses incurred by Alum-A-Pole in the pursuit of this action; and

g. For costs of suit and such further relief as this Court may deem just and appropriate.

Respectfully submitted,

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